



Githinji & 3 others v Unique Shelters Limited & 2 others (Environment and Land Appeal E036 of 2021) [2022] KEELC 14472 (KLR) (28 October 2022) (Ruling)

Neutral citation: [2022] KEELC 14472 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E036 OF 2021
MN GICHERU, J
OCTOBER 28, 2022**

BETWEEN

**PETER GITURO GITHINJI 1ST APPELLANT
HILDA KERUBO ONDARI 2ND APPELLANT
JOSEPH M. KAMAU 3RD APPELLANT
WILSON KAMAU T/A VIEW HILL AGENCY 4TH APPELLANT**

AND

**UNIQUE SHELTERS LIMITED 1ST RESPONDENT
LAND REGISTRAR, KAJIADO 2ND RESPONDENT
DISTRICT SURVEYOR (KAJIADO NORTH DISTRICT) 3RD RESPONDENT**

RULING

1. This ruling is on the notice of motion dated 15/2/2022. The application which is under orders 40 and 42 rule 6(6) *Civil Procedure Rules*, sections 1A, 1B and 3A of the *Civil Procedure Act* and all enabling provisions of law seeks an order of temporary injunction restraining the respondents from alienating LR Kajiado/Loodariak/20 pending the hearing and determination of this appeal.
2. The application is supported by an affidavit sworn by one Wilion Ngotho, the director of Unique Shelters, in which he deposes that the suit land is in danger of interference by the respondents who have trespassed thereon.

Annexed to the affidavit are twelve photographs showing a freshly constructed fence made of wooden poles and barbed wire, freshly deposited building stones and a house.
3. The application is opposed by the respondents who filed grounds of opposition dated April 20, 2022.



The grounds include the following.

- a. That the application is defective for having been instituted by way of chamber summons instead of by way of notice of motion.
 - b. It offends order 50 rule 1 of the *Civil Procedure Rules* which provides that all applications be by way of notice of motion.
 - c. The application does not meet the threshold for the grant of an order of injunction.
 - d. The prayers have been couched in a manner aimed at defeating the first and second respondents' right to be heard and accorded fair administrative action.
4. In addition to the grounds of opposition, one Peter Gituro Githinji has sworn a replying affidavit dated 20/4/2022 in which he strongly opposes the application in its entirety.
5. I have carefully considered the application in its entirety and I find that it has no merit because as I said earlier in the other ruling, this suit ought not to be before the court. It should be determined by the Land Registrar first before coming to court. This court has no jurisdiction.

Secondly, land is immovable property and if the Respondents put up structures on land that does not belong to them, they will be the losers because such structures will eventually be demolished.

For the above stated reasons, I dismiss the application dated February 15, 2022 with costs to the Respondent.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28TH DAY OF OCTOBER, 2022.

M.N. GICHERU

JUDGE

